

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs March 12, 2002

STATE OF TENNESSEE v. WILLIE EARL KYLES, JR.

**Appeal from the Circuit Court for Lauderdale County
No. 7076 Joseph H. Walker, Judge**

No. W2001-01931-CCA-R3-CD - Filed May 3, 2002

The defendant, Willie Earl Kyles, Jr., was convicted of possession of .5 grams or more of cocaine with the intent to deliver. See Tenn. Code Ann. § 39-17-417(c)(1). The trial court imposed a 12-year sentence. Because the defendant was classified as a multiple offender, release eligibility was established at 35%. In this appeal of right, the defendant challenges the sufficiency of the evidence. The judgment is affirmed.

Tenn. R. App. P. 3; Judgment of the Trial Court Affirmed

GARY R. WADE, P.J., delivered the opinion of the court, in which NORMA MCGEE OGLE and ALAN E. GLENN, JJ., joined.

Julie K. Pillow, Assistant District Public Defender, for the appellant, Willie Earl Kyles, Jr.

Paul G. Summers, Attorney General & Reporter; P. Robin Dixon, Jr., Assistant Attorney General; and Tracey Brewer, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

On July 7, 2000, Investigators John Bradley Thompson and Jeff Tudor of the Lauderdale County Sheriff's Department, Officer Greg Land of the Ripley Police Department, and Special Agent Barry Jones of the Tennessee Alcoholic Beverage Commission received a warrant authorizing a search of the Stan Lattimore residence at 175 Nelson Street in Ripley. The officers saw Lattimore and the defendant together in an automobile on Spring Street only minutes before the search of the residence. The automobile, which belonged to Lattimore, was in the driveway when they arrived. Tanika Bonds,¹ who shared the residence with Lattimore, was sitting on the front porch and was served a copy of the warrant. As the officers executed the search warrant, the defendant walked out of the bathroom. Lattimore was not present. The officers found two bags of cocaine, which were later determined to have a total weight of 2.5 grams, and a bag of marijuana in a garbage can in the bathroom. The defendant claimed that the drugs were for his own use but conceded, when first

¹Ms. Bonds is also referred to in the record as Tinika Bonds and Tamika Bonds.

questioned, that he had no employment. He had \$171.00 in cash at the time of his arrest and explained that the money was for overdue child support. He claimed that he had purchased the cocaine from a man named Robert for \$35.00 per bag and had used a portion of one of the bag's contents.

At trial, the defendant testified that he was divorced and had four children. He claimed that he was, in fact, employed in the record business at the time of his arrest, promoting the sale and distribution of compact discs. The defendant detailed how he promoted music through record stores and radio stations and submitted that he had maintained a job with Incognito Records since 1996. As exhibits, he produced a compact disc, a poster, and a flier. The defendant explained that on the date of his arrest, he had purchased the cocaine from "a guy named Robert." The defendant claimed that he went into the bathroom and "did [his] little thing" just before authorities arrived.

The defendant, also charged with possession of marijuana, entered a guilty plea on that count. He asserted that \$71.00 of what he had in his pocket was for himself and that the remaining \$100.00 was to be paid to an ex-wife for child support. The defendant claimed that on the day of his arrest, he had walked to Lattimore's residence from a nearby apartment complex and had not seen Lattimore until after the execution of the search warrant. He testified that a friend had provided him transportation from Memphis and that he intended to catch a bus home on the following afternoon. The defendant explained that he had arranged to spend the night in Ripley with his "old lady's mom." He maintained that he hid the drugs in the Lattimore garbage can instead of disposing of them because he thought that the individual at the door "was just one of the guys coming in, playing." He insisted that he had come from Shelby County to Lauderdale County only to visit his son, who was in the custody of his mother. The defendant stated that his cocaine habit extended over a period of three years. The state impeached the testimony of the defendant by the introduction of a 1989 armed robbery conviction.

Expert testimony established that the substance found by police was cocaine. One bag's contents weighed 1.9 grams and that of the other weighed .6 grams. The defendant explained that he had used a portion of the smaller bag just before the officers arrived. Neither Lattimore nor Bonds was charged by police.

The defendant claims that the evidence was insufficient that he intended to deliver the cocaine. He argues that the amount of the drugs, standing alone, is insufficient to allow an inference of intent to deliver.

On appeal, the state is entitled to the strongest legitimate view of the evidence and all inferences which might be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). The credibility of the witnesses, the weight to be given their testimony, and the reconciliation of conflicts in the evidence are matters entrusted exclusively to the jury as the trier of fact. Byrge v. State, 575 S.W.2d 292, 295 (Tenn. Crim. App. 1978). The relevant question is whether, after reviewing the evidence in the light most favorable to the state, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Tenn. R. App. P. 13(e); State

v. Williams, 657 S.W.2d 405, 410 (Tenn. 1983). This court may neither reweigh nor reevaluate the evidence; nor may this court substitute its inferences for those drawn by the trier of fact. Liakas v. State, 199 Tenn. 298, 286 S.W.2d 856, 859 (1956). The evidence is sufficient when a rational trier of fact could conclude that the defendant is guilty beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319 (1979). The defendant has the burden of demonstrating that the evidence is not sufficient when there is a challenge to the sufficiency of the evidence. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

An offense may be proven by circumstantial evidence alone. Price v. State, 589 S.W.2d 929, 931 (Tenn. Crim. App. 1979). Our scope of review is the same when the conviction is based upon circumstantial evidence, when it is based upon direct evidence, and when there is a mixture of both. State v. Brown, 551 S.W.2d 329, 331 (Tenn. 1977); Farmer v. State, 208 Tenn. 75, 343 S.W.2d 895, 897 (1961).

The proof established that the 2.5 grams of cocaine had a value of \$200.00 to \$300.00. Agent Jeffrey Driessen, a forensic scientist with the TBI Crime Laboratory, testified that the typical cocaine user purchases .1 to .2 grams, only about 1/25th of the amount found in the possession of the defendant. No paraphernalia for use of the drugs was present and Investigator Thompson and Officer Land testified that the defendant did not appear to be under the influence of cocaine. Despite proof that the defendant was unemployed, he had \$171.00 in cash at the time of his arrest. A jury may infer possession for sale or delivery based upon the quantity of the drugs coupled with the surrounding circumstances. State v. Holt, 691 S.W.2d 520, 522 (Tenn. 1984). It is our view that from all of the evidence presented, a rational jury could have determined that the defendant was guilty of possessing the cocaine with the intent to deliver. See Tenn. Code Ann. § 39-17-417(a)(4).

Accordingly, the judgment is affirmed.

GARY R. WADE, PRESIDING JUDGE